

**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH (NAHARLAGUN)**

**Criminal Appeal No. (J) 04 (AP)/2018**

**1. Shri Patima Linggi,**  
Son of Late Kaki Linggi,  
Village - Koronu,  
P.O./P.S. - Roing,  
District- Lower Dibang Valley,  
Arunachal Pradesh.

.....Appellant.

**-VERSUS-**

**1. The State of Arunachal Pradesh,** represented by the  
Public Prosecutor

.....Respondent.

**By Advocates:**

For the Appellant : Shri K. Tari, Amicus Curiae

For the respondent : Shri S. Tapin, learned Senior Government Advocate

**:::BEFORE:::  
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : **30.05.2019.**

Date of Judgment : **30.05.2019.**

**JUDGMENT & ORDER(ORAL)**

**1.** The present appeal has been preferred against the judgment and order dated 09.03.2015, passed by the learned Sessions Judge, East Sessions Division, Tezu, in Sessions Case No. 127(LDV)/2011. By the impugned judgment and order, the appellant has been convicted under Section 304 [Part-II] and sentences to undergo rigorous imprisonment for a period of 6 (six) years. At the outset, it may be noted that the appeal is preferred from the Jail.

**2.** I have heard Shri K. Tari, learned Amicus Curiae for the appellant and Shri S. Tapin, learned Senior Government Advocate, acting as the Public Prosecutor, Arunachal Pradesh.

**3.** The starting of this case is a First Information Report lodged in the Roing Police Station dated 06.08.2011 by one Shri Toteme Mena (PW-1), alleging that the present appellant was suspected to have caused serious injuries to the deceased at about 10.30 p.m. at Koronu Bridge side. It is the case of the prosecution that the deceased was brought to the hospital on an injured state and he had later succumbed to his injuries. The case was registered as Roing P.S. Case No. 58/2011, under Section 302 IPC.

**4.** There are altogether 13 (thirteen) numbers of prosecution witnesses, who were produced before the learned Trial Court. Out of the thirteen witnesses, the witnesses of PW-2 and PW-3 are of importance as these two witnesses were present at the time of occurrence. Nonetheless, a brief description of the deposition is given below.

**5.** PW-1, Shri Toteme Mena, is the father of the deceased and the informant. His version is only a hear-say and therefore, cannot be given any evidentiary value. PW-2, Shri Laya Mena, was amongst the two witnesses who were present at the time of occurrence. PW-2 deposes that he saw both the deceased and the appellants aggressively fighting who were initially separated and thereafter they again started fighting which had caused injuries to the deceased for which he had succumbed. He further deposed that he himself sustained severe injuries on his leg by a bottle as the persons were having Beer at that time near the Koronu Bridge.

**6.** PW-3, Shri Malati Elapra, was also present in the place of occurrence and his version corroborates with that of the PW-2. He deposed that the accused had caused injury to the deceased and he along with the accused had later lifted the injured and tried to stop the bleeding. PWs 4, 5, 6, 7 & 8 are not eye witnesses but were produced as PWs as they had certain knowledge about the incident. PW-4, however, submits that the present appellant had told him that he had injured the deceased with a bottle. He, however, also deposed that the appellant had asked him to lift the injured and take him to Roing Hospital. As stated above, the PWs 5, 6, 7 & 8 were connected to the incident not at the time of occurrence but either before that or subsequently. PW-9 is the Doctor

who had conducted the post-mortem on the deceased where mainly three external injuries were found. The death in the opinion of the PW-9 was said to be due to heavy blood loss. PW-10 is the elder brother of the deceased. However, he was not there in the place of occurrence. PW-11 who was the Judicial Magistrate First Class at that relevant point of time before whom the confession was made. The said PW-11, however, does not state as to how much time for reflection was granted to the appellant accused. The aforesaid fact attains significance because of the fact that the statements have been said to be recorded sometime between 10.30 p.m. to 11.00 p.m. On perusal of the relevant form where the confession was recorded and exhibited as P. Ext.-5, it is also not clear that in charge of whom the appellant was placed during the time of reflection as none of the option of Peons/Arm Police Constable has been indicated. Even otherwise, there was no confession as such made by the appellant confessing any guilt or his involvement leading to the injury and death.

**7.** Though certain articles were seized as revealed in the Seizure Memo which was exhibited at P. Ext.-2, none of the seized articles which were beer bottles and pieces were sent for forensic examination.

**8.** The conviction and sentence appear to be based on the evidence of mainly of PW-2 & PW-3. However, on reading of the evidence of the aforesaid two witnesses, another thing becomes clear that there was no intention of the appellant to cause any injuries. At least two of the witnesses have deposed that it was the appellant who had requested them for taking the deceased to the hospital as soon as possible. In case of any intention or object to cause to bodily hurt, such conduct on the part of the person involved or trying to help the injured would be against normal human behavior. However, though the PWs 2 & 3 were present at the place of occurrence, the said two PWs or for that matter any other witnesses has seen the actual blow by any object given by the appellant to the deceased which had caused the injury leading to his death. It is also not a case that at the place of occurrence only the deceased and the appellant were present and rather it is the case of the prosecution that a number of persons were there who were all at an intoxicated stage. It is also the prosecution evidence that in the statement made under Section 164 Cr.P.C. of the appellant, he had also stated that it could not be detected as to how the deceased has sustained injuries and admittedly, he had fallen into the stream

from which he was lifted by the appellant himself along with the other persons present and also examined as witnesses.

**9.** The evidence on record and its appreciation suggest that it may not be a case for conviction and the appellant is entitled to get the benefit of doubt. Therefore, this Court is of the view that the appeal may be partly allowed by reducing the sentence for the period already undergone. Therefore, the appellant is directed to be released from custody, forthwith.

**10.** Before parting with the records, this court would put on record the valuable assistance rendered by the learned Amicus Curiae, Shri K. Tari as well as by the learned Senior Government Advocate Shri S. Tapin acting as the learned Public Prosecutor, Arunachal Pradesh. The learned Amicus Curiae, Shri K. Tari, would be entitled to an honorarium of Rs. 10,000/- (Rupees ten thousand) only to be paid by the State Legal Service Authority, Arunachal Pradesh.

**11.** Appeal is accordingly disposed of.

**JUDGE**

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